

No. 03-20-00129-CV

IN THE THIRD COURT OF APPEALS
AUSTIN, TEXAS

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QATAR FOUNDATION FOR EDUCATION, SCIENCE AND
COMMUNITY DEVELOPMENT,

JEFFREY D. KYLE
Clerk

Appellant,

v.

KEN PAXTON, TEXAS ATTORNEY GENERAL, AND
ZACHOR LEGAL INSTITUTE,

Appellees.

On Appeal from the 200th Judicial District Court of Travis County, Texas
Trial Court Cause No. D-1-GN-18-006240

**APPELLEE ZACHOR LEGAL INSTITUTE'S
ORAL ARGUMENT EXHIBITS**

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¹ All statutory references in these Oral Argument Exhibits are to the Texas Government Code unless otherwise stated.

TAB A

TEXAS PUBLIC INFORMATION ACT POLICY

Sec. 552.001. POLICY; CONSTRUCTION. (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, **it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees.** The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. **The provisions of this chapter shall be liberally construed to implement this policy.**

(b) **This chapter shall be liberally construed in favor of granting a request for information.**

TAB B

A STATUTORY WAIVER OF THE STATE'S IMMUNITY
MUST BE "BEYOND DOUBT"

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY.

In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, **a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language.** In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction. Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.

“[A] statute that waives the State's immunity **must do so beyond doubt. . . .**”

***Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697
(Tex. 2003)**

“[A] statute that contemplates a government entity's **involvement in litigation** does not ‘clearly and unambiguously waive’ the entity's immunity from suit.”

***Kirby Lake Dev. V. Clear Lake City Water*, 320 S.W.3d
829, 837 (Tex. 2010)**

Waiver of immunity only exists **“when a statute speaks with unmistakable clarity.”**

***City of Galveston v. State of Texas*, 217 S.W.3d 466, 469
(Tex. 2007)**

TAB C

STATUTORY LANGUAGE
USING TERM “SUE” OR “SUIT” HELD NOT TO
CLEARLY AND UNAMBIGUOUSLY WAIVE IMMUNITY

CASE	LANGUAGE HELD NOT CLEARLY WAIVING IMMUNITY	LANGUAGE HELD TO CLEARLY WAIVE IMMUNITY
<i>Tooke v. City of Mexia</i> , 197 S.W.3d 325 (Tex. 2006)	<p>“sue and be sued”</p> <p>“plead and be impleaded”</p> <p>Held: These terms do not waive immunity.</p>	N/A
<i>Kirby Lake Dev., v. Clear Lake City Water Auth.</i> , 320 S.W.3d 829 (Tex. 2010)	<p>Texas Water Code § 49.066(a) provides:</p> <p>“[a] district may sue and be sued in the courts” and</p> <p>“suit . . . may be brought against a district only on a written contract of the district approved by the district’s board”</p> <p>Held: “Because section 49.066 does not contain a clear and unambiguous waiver, the ‘sue and be sued’ language in 49.066(a) does not on its own abrogate governmental immunity.”</p>	<p>“A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract. . . .” TEX. LOC. GOV'T CODE § 271.152.</p>

<p><i>Harris Cty. Hosp. Dist. v. Tomball Reg'l Hosp.</i>, 283 S.W.3d 838 (Tex. 2009)</p>	<p>Texas Health and Safety Code § 61.0045 provides that if a patient is an eligible resident the hospital district “shall pay the claim made by the provider.”</p> <p>Held: “[S]ection 61.0045 is directed toward the question of whether a hospital district is <i>liable</i> for allowable expenses; but the statute is silent as to waiver of a district's immunity from suit asserting a right to reimbursement by parties such as THA. Thus, section 61.0045 does not waive HCHD's immunity from suit.”</p>	<p>N/A</p>
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<p><i>Schmitz v. Denton Cty. Cowboy Church</i>, 550 S.W.3d 342 (Tex. App.—Fort Worth 2018, pet. denied)</p>	<p>Town of Ponder, Tex., Code of Ordinances tit. XV, ch. 154, § 154.99 (2017) provided:</p> <p>“the right is hereby conferred . . . [on any property owner in the district] to bring suit in the courts having jurisdiction thereof and obtain any remedies as may be available at law and equity”</p> <p>Held: “[T]his ordinance—section 154.99—does not constitute a clear and unambiguous waiver of the Town's immunity. <i>See generally</i> TEX. GOV'T CODE § 311.034.”</p>	<p>“An interested person . . . may bring an action by mandamus or injunction to stop, prevent, or reverse a violation . . . of this chapter by members of a governmental body.” TEX. GOV'T CODE § 551.142(a).</p>
<p><i>Romo v. Cavendar Toyota, Inc.</i>, 330 S.W.3d 648 (Tex. App.—San Antonio 2010, no pet.)</p>	<p>“An assessor-collector who fails or refuses to comply with this chapter is liable on the assessor-collector's official bond for resulting damages suffered by any person.”</p> <p>Held: “This language appears to address Romo's liability rather than her immunity from suit.”</p>	<p>N/A</p>

TAB D

TEXAS PUBLIC INFORMATION ACT

**THE SOLE PROVISION QATAR FOUNDATION ASSERTS
WAIVES IMMUNITY FROM SUIT FOR IT
TO SUE THE ATTORNEY GENERAL**

**Sec. 552.325. PARTIES TO SUIT SEEKING TO WITHHOLD
INFORMATION**

(a) A governmental body, officer for public information, or other person or entity that files a suit seeking to withhold information from a requestor **may not file suit** against the person requesting the information. The requestor is entitled to intervene in the suit.

TAB E

TEXAS PUBLIC INFORMATION ACT – SUBCHAPTER H,
CIVIL ENFORCEMENT

**RELEVANT CLEAR AND UNAMBIGUOUS WAIVERS
OF SOVEREIGN OR GOVERNMENTAL IMMUNITY**

**(Qatar Foundation asserts none of these provisions as a
basis for waiver of sovereign immunity.)**

Sec. 552.321. SUIT FOR WRIT OF MANDAMUS

(a) **A requestor or the attorney general may file suit for a writ of mandamus compelling a governmental body** to make information available for public inspection if the governmental body refuses to request an attorney general's decision

Sec. 552.3215. DECLARATORY JUDGMENT OR INJUNCTIVE RELIEF

* * *

(b) An action for a declaratory judgment or injunctive relief may be brought in accordance with this section against a governmental body that violates this chapter.

(c) **The district or county attorney for the county** in which a governmental body other than a state agency is located **or the attorney general may bring the action** in the name of the state only in a district court for that county.

Sec. 552.323. ASSESSMENT OF COSTS OF LITIGATION AND REASONABLE ATTORNEY FEES

(a) In an action brought under Section 552.321 or 552.3215, **the court shall assess costs of litigation and reasonable attorney fees incurred by a plaintiff who substantially prevails**, except that the court may not assess those costs and fees against a governmental body if the court finds that the governmental body acted in reasonable reliance on [three factors]. . . .

(b) In an action brought under Section 552.324, the **court may not assess costs of litigation or reasonable attorney's fees incurred by a plaintiff or defendant** who substantially prevails unless the court finds the action or the defense of the action was groundless in fact or law.

Sec. 552.324. SUIT BY GOVERNMENTAL BODY

(a) The **only suit a governmental body may file seeking to withhold information from a requestor** is a suit that:

- 1) is filed in a Travis County district court against the attorney general in accordance with Section 552.325; and
- (2) seeks declaratory relief from compliance with a decision by the attorney general issued under Subchapter G.

(b) The governmental body must bring the suit not later than the 30th calendar day after the date the governmental body receives the decision of the attorney general determining that the requested information must be disclosed to the requestor. . .

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on counsel of record by using the Court's CM/ECF system on the 9th day of March 2021.

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